

155-263
1242**SECRET****15 February 1955****Memorandum for: Deputy Director (Administration)**

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Subject : Special Living Allowances - [REDACTED]**OGC HAS REVIEWED.****INTRODUCTION**

1. Reference is made to the attached file which involves:
(a) the payments of \$10.00 per diem for a period up to sixty (60) days in lieu of temporary lodging allowances to seven employees upon their arrival PCS in [REDACTED], and (b) the payment of a special living allowance to [REDACTED] while stationed in [REDACTED] on PCS. The comments of this office concerning the propriety of these payments to the recipients will be joined in this memorandum inasmuch as elements common to both submissions are involved. The case of [REDACTED] and the seven employees are not before this office for the first time, having been previously commented upon.

2. In our memorandum of 1 October 1953, addressed to the Inspector General, relative to the [REDACTED] case, we concluded that there was no legal basis for authorizing the special living allowance, observing further that there appeared to be no valid justification. We noted, at that time, that the area division had inquired about the possibility of paying under other types of allowances before a special living allowance was suggested, for which reason we added there was every reason to know that the allowance should not have been authorized or, in the alternative, that there was every reason to ask for a ruling in advance.

3. In our memorandum of 19 August 1952 to the Chief, Finance Division, we expressed the opinion that payments in excess of the territorial cost-of-living allowance prescribed by the regulations of the Civil Service Commission were improper. This opinion was

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prompted by memorandum of 1 July 1952 from the Chief, Finance Division, wherein the payment of living allowances, other than those prescribed under normal regulations, was questioned.

4. [REDACTED]

Various arguments

are advanced in support of the recommendations for relief and additional facts appear to have been developed. In view of these additional facts and the recognizably interesting arguments that are advanced in support of the recommendation for relief, we feel that no less than a full review of the case is warranted under the circumstances, not only because of the importance to the Agency but also to the individuals concerned. We shall, therefore, initially proceed to a restatement of the facts in the case of the seven employees as evidenced by the available record. Following an analysis of the facts and the arguments in support of the recommended relief, we shall state our conclusions. We shall likewise proceed in the same manner with respect to the [REDACTED] case, which, because of the presence of other elements, is somewhat more complex and will require some additional treatment.

FACTS

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ARGUMENTS

Argument I. Hardship.

1. This argument proceeds on the principle that some penalty attaches if the employee is required to meet what may well be high expenses of living at his post out of salary. The argument continues by referring to tight housing conditions, high prices, and the non-eligibility of civilian employees for Government accommodations. The conclusion is reached that an unwarranted financial hardship is imposed and that relief therefrom unwarranted. We refer once again to our decision of 19 August 1952. We believe it clearly establishes that there was one and only one source of authority with respect to the granting of territorial cost-of-living allowances. That authority was the Civil Service Commission. That authority existed from the time of the cited statutes and Executive Order 10,000 of 16 September 1946. Unlike the authority granted to this Agency by Executive Order 10100 to grant allowances pursuant to Sections 901(1) and 901(2) of the Foreign Service Act, this Agency possesses no residual authority to enter the regulatory field concerned. We must necessarily hold that this area is pre-empted by the Civil Service Commission and that the only basis by which this Agency may enter the area is through due recognition of operational causation or situation.

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CONCLUSION

1. Under the facts and circumstances as presented to us, we are compelled to the conclusion that there is nothing in these cases which requires the application of rules other than those applying to the Government generally. We believe there is agreement that no basis arising out of operations peculiar to this Agency existed for the grant of the [REDACTED] cost-of-living allowances. Therefore, the payments involved were not consistent with Agency policy based on law. We, therefore, confirm our previous decisions on this subject.

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/s/

Lawrence A. Houston
General Counsel

Attachment

OGC:JBK:cst
cc: Inspector General
DD/P-Admin
Chief, FE
Legal
Vital
Subject ✓
Signer
Chrono

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ORIGINAL DOCUMENT MISSING PAGE(S):

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